IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

CRL.A.No. 1070 of 2002()

CC.31/2000 of JUDL. MAGISTRATE OF FIRST CLASS-IV (MOBILE), THIRUVANANTHAPURAM.

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APPELLANT: COMPLAINANT

N.ALPHONSE, T.C.34/616, BEENA BHAVAN,VET TUCAUD, THIRUVANANTHAPURAM

BY ADV. SRI.D.KISHORE

RESPONDENTS: ACCUSED AND STATE

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1. N.ALI, PROPRIETOR, MAK PRODUCTIONS, PANANGANGARA, RAMAPURAM P.O., MALAPPURAM DISTRICT, (OFFICIAL ADDRES: MAK PRODUCTIONS, T.C.25/701, THYCAUD, THIRUVANANTHAPURAM)

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, OFFICE OF THE ADVOCATE GENERAL, ERNAKULAM

BY ADV. SRI.R.V.ABHISHEK
SRI.M.RAMACHANDRAN NAIR -R1
SRI.R.V.ABHISHEK
PUBLIC PROSECUTOR SRI. S. DILEEP - R2

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1070 OF 2002

Dated this the 12th day of June, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No.31 of 2000 on the file of the Judicial First Class Magistrate's Court IV (Mobile), Thiruvananthapuram.

2. The appellant filed a complaint against the accused - first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The case set up by the complainant before the court below was that the accused - first respondent issued Ext.P1 cheque for an amount of Rs.5,00,000/- in favour of the complainant towards repayment of a debt and that when the cheque was presented to the bank for encashment, the same was dishonoured with the endorsement "payment stopped by the drawer". The complaint was filed after complying with the statutory provisions regarding notice, reply etc. and on finding that the amount covered by the cheque was not paid. To prove the case against the first respondent, the complainant - appellant

himself was examined as PW.1 and Exts.P1 to P6 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the alleged transaction contained in the complaint, the accused - first respondent stated that he had issued a signed blank cheque in favour of Media Club Pvt. Ltd., a film production company and that he had not issued any cheque in favour of the appellant as alleged in the complaint. He also stated that there was receipt for the issuance of the cheque. To prove the case of the accused, he himself was examined as DW.2 and one of the Managing Directors of Media Club Pvt. Ltd. was examined as DW.2 and Exts.D1 to D8 were produced. After considering the entire evidence, the trial court found that the complainant failed to prove the transaction between himself and the accused which led to the issuance of the cheque in question. The trial court also found that the case set up by the accused was more probable and it was proved beyond reasonable doubt. The trial court thus acquitted the accused.

3. Heard the matter in detail and perused the records made available before this Court.

4. Even though the specific case of the appellant was that the first respondent had issued the cheque in question towards discharge of a

liability of Rs.5,00,000/-, the appellant could not prove that the said cheque was issued on accepting any consideration or on the basis of any existing consideration. The trial court found that the evidence of the accused was supported by the evidence given by DW.2. After hearing the learned counsel on either side, this Court is of the view that the finding of the court below is based on evidence and hence the impugned judgment requires no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.1070/2002

JUDGMENT

12TH JUNE, 2007.